

WEBTRENDS TERMS OF SUBSCRIPTION SERVICE

Effective: February 1, 2016

These Terms of Subscription Service (“**Agreement**”) are entered into by and between the entity or person placing an order or accessing the Solutions (as defined below) (“**Client**”) and the Webtrends entity specified on the Quote or other order form. If the Webtrends entity is not Webtrends Inc., then Supplemental Terms apply as follows:

- If the Webtrends entity entering into this Agreement is WT EMEA Acquisition Limited, then the terms in **Exhibit E-1** (Supplemental Terms) apply and will prevail in event of a conflict with the main body of this Agreement.
- If the Webtrends entity entering into this Agreement is Webtrends Nordic AB, then the terms in **Exhibit E-2** (Supplemental Terms) apply and will prevail in event of a conflict with the main body of this Agreement.
- If the Webtrends entity entering into this Agreement is WT EMEA Acquisition Limited, Australasia Branch, then the additional terms in **Exhibit E-3** (Supplemental Terms) apply and will prevail in event of a conflict with the main body of this Agreement.

Webtrends Inc., WT EMEA Acquisition Limited, Webtrends Nordic AB, and WT EMEA Acquisition Limited, Australasia Branch are each referred to herein as “**Webtrends**”.

The “**Effective Date**” of this Agreement is the date that is the earlier of (a) the effective date of the first Quote referencing this Agreement and (b) Client’s initial access to the Solutions through any Webtrends online registration, provisioning, or order process.

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement in which case the term “Client” shall refer to such entity. If you do not have such authority, or if you do not agree to the terms of this Agreement, do not accept this Agreement or use the Solutions. **If you receive free, trial or evaluation access to the Solutions, you are deemed a “Client” under this Agreement and are further subject to the restrictions and limitations in Section 7.4 (Trial Subscriptions) below.** Client may not use or access the Solutions if it is a direct competitor of Webtrends or is accessing or using the Solutions for the benefit of a direct competitor of Webtrends.

This Agreement permits Client to purchase a subscription to Solutions and related services from Webtrends pursuant to Quotes and sets forth the terms and conditions under which those Solutions and services will be delivered. This Agreement shall govern Client’s initial purchase as well as any future purchases made by Client which reference this Agreement. This Agreement includes any and all Exhibits, referenced policies and attachments, and all Quotes.

From time to time, Webtrends may modify this Agreement with ten (10) days’ notice to Client. Unless otherwise specified by Webtrends, changes become effective for existing subscription Clients upon posting of the modified Agreement. If Client does not agree to such changes, Client must notify Webtrends of such disagreement within the ten (10) day notice period, and Webtrends (at its option and as Client’s exclusive remedy) may either: (i) permit Client to continue under the prior version of this Agreement until the next renewal of the current Order Term, after which the modified Agreement will apply (for example, if Client is on an annual Order Term, then the modified Agreement will apply starting from the beginning of Client’s next annual Order Term after it is posted) or (ii) terminate this Agreement and provide to Client a refund of any Solution fees that Client already paid with respect to the terminated portion of the applicable Order Term. Webtrends will use reasonable efforts to notify Client of the changes through communications through Client’s Account, email, or other means. Client may be required to click to accept the modified Agreement before using the Solutions in a renewal Order Term, and in any event, continued use of the Solutions during the renewal Order Term will constitute Client’s acceptance of the version of the Agreement in effect at the time the renewal Order Term begins.

Each party expressly agrees that this Agreement is legally binding upon it.

1. DEFINITIONS AND INTERPRETATION –

1.1 Definitions - Capitalized terms not included in this Section are defined contextually in this Agreement.

- a) “**Account**” means the online account and dashboard that Webtrends provides for Client to manage its use of the Solutions.
- b) “**Affiliate**” means an entity that owns or controls, is owned or controlled by or is under common ownership or control with Client, where “control” means the power to direct the management or affairs of an entity and “ownership” means the beneficial ownership of fifty percent (50%) or more of the voting securities or other equivalent voting interests of an entity.
- c) “**Client Applications**” means Client’s and its Affiliates’ online websites, mobile applications, SharePoint sites and other properties that support the deployment of Tagging Methods. For clarity, Client Applications do not include Client’s accounts or pages on Third Party Platforms.
- d) “**Client Content**” means any visual elements, images, text, or other content provided by Client (a) for display as part of tests using the Optimize Solution or (b) for display within other Solutions (e.g. to brand or customize Client’s accounts) as permitted by Webtrends and the functionality of the Solutions.
- e) “**Client Data**” means all data collected by or on behalf of Client through the Tagging Methods, as well as the results, reports, and data feeds based on such collected data that are provided to Client through the Solutions (excluding any Webtrends report templates or

other Webtrends Technology). If Client submits any data directly into the Solutions (e.g. translation tables), that data is also included in Client Data.

- f) **"Client Materials"** means any Client materials (including Solutions Data or Client Content) reasonably required for Webtrends to perform the Professional Services.
- g) **"Confidential Information"** is defined in Section 14 (Confidential Information).
- h) **"Configuration Services"** means configuration, implementation, or training services for the Solutions.
- i) **"Contractors"** means independent contractors and consultants who are not competitors of Webtrends.
- j) **"Deliverables"** means any deliverables provided by Webtrends to Client in connection with the Professional Services.
- k) **"Design Deliverables"** means any Deliverables provided by Webtrends as part of Digital Marketing Services that consist of and are expressly identified in the applicable SOW as visual design elements specific to Client (excluding any underlying Webtrends Technology).
- l) **"Digital Marketing Services"** means strategic, advisory, design and/or other consulting services related to digital marketing provided by Webtrends in connection with Client's use of the Optimize Solution.
- m) **"Documentation"** means the applicable end user technical documentation made available with the Solutions and currently located at <http://producthelp.webtrends.com/> (as may be modified from time to time by Webtrends in its sole discretion).
- n) **"Erase"** means to render access to data infeasible when using simple non-invasive data recovery techniques.
- o) **"EU Directive"** means EU Directive 95/46/EC (or successor).
- p) **"HIPAA"** means the Health Insurance Portability and Accountability Act, as amended and supplemented.
- q) **"Laws"** means all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data.
- r) **"Order Term"** means the subscription term specified for each Solution in the applicable Quote and, in the event that such Quote does not include a "start date", the Order Term will commence on the date that Webtrends electronically confirms Client's order to the applicable Solution.
- s) **"Permitted Users"** means Client's employees, Contractors, and Affiliates (and its Affiliates' employees and Contractors).
- t) **"Professional Services"** means professional services provided by Webtrends under this Agreement.
- u) **"Prohibited Data"** means any personal data that could be legally considered sensitive in any applicable jurisdiction, including, without limitation, government issued identification, individual medical or health information (including PHI), individual financial information, credit or debit card numbers, birth dates, security codes, passwords, and special categories of personal data as defined in Article 8 of the EU Directive.
- v) **"Protected Health Information"** or **"PHI"** has the meaning defined in HIPAA.
- w) **"Purchased Units"** means the specified usage metrics for a Solution, which may include server calls, requests to a database, page loads, tracking requests, concurrent connections, or other events or metrics. Additional definitions related to the concept of "Purchased Units" are provided in **Exhibit A** (Purchased Units Definitions).
- x) **"Quote"** means Webtrends-generated order documentation (including any Webtrends online registration, provisioning or other order process) referencing this Agreement and mutually executed or electronically accepted by Client.
- y) **"Solutions"** means the specific online software-as-a-service products ordered by Client as identified on the applicable Quote. The term "Solutions" includes the related Tagging Methods and Documentation (but excludes Professional Services).
- z) **"Solutions Data"** means Client Data and Third Party Data.
- aa) **"Statement of Work"** or **"SOW"** means a statement of work for Professional Services executed by both parties describing the work to be performed, fees, and any applicable milestones, assumptions, and other technical specifications or related information.
- bb) **"Tagging Methods"** means the Webtrends code, tags, application programming interfaces ("**API**" or "**APIs**"), software development kits ("**SDK**" or "**SDKs**"), beacons, cookies, or other tracking, data collection, and content optimization methods made available to Client for use with Client Applications.
- cc) **"Third Party Data"** means data retrieved by or on behalf of Client from Third Party Platforms by the Solutions, either through access to Client's credentialed accounts for the applicable Third Party Platforms or through other means made available by such Third Party Platforms (such as a third party API).
- dd) **"Third Party Platform"** means a third party platform, website, or service (such as ExactTarget, Facebook, Twitter, or YouTube) with which Client Data may be shared or from which the Solutions enable collection of Third Party Data.
- ee) **"Webtrends Technology"** is defined in Section 6 (Ownership).

1.2 Interpretation - In this Agreement, unless the context otherwise requires or the contrary intention appears, the words "including" and "in particular" and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions. Further, headings in this Agreement are for convenience only and do not affect its interpretation.

2. THE SOLUTIONS

2.1 Overview - Webtrends offers various Solutions (such as Analytics, Streams, Action Center, Segments, Explore and Optimize) to collect Client Data from Client Applications and Third Party Platforms for reporting, analytics, testing and targeting. The Solutions are provided on a subscription basis for specified Order Terms. Webtrends may make available optional add-ons or code (e.g., the Webtrends SharePoint Application), which are also included in the "Solutions" under this Agreement and may be subject to supplementary terms specified by Webtrends.

2.2 Access and Use - Client may access and use the Solutions specified on the applicable Quote during the applicable Order Terms solely for its own internal business purposes and in accordance with the terms and conditions of this Agreement, the Documentation, and any scope of use restrictions designated in the applicable Quote. This includes the right for Client to copy Tagging Methods (for use with the

Solutions and related backup purposes) and to deploy Tagging Methods on Client Applications. For Tagging Methods provided in source code format, Client may make modifications as permitted in the Documentation, except that Client may not take any action that would subject the Tagging Methods to any third party terms, including without limitation any open source license terms. Use of the Solutions is charged based on, or limited to, the Purchased Units. The Purchased Units will be specified in the applicable Quote and will expire at the end of the applicable Order Term. Client will pay overage fees for exceeding its Purchased Units as set forth in the applicable Quote and **Exhibit A** (Purchased Unit Definitions).

2.3 Permitted Users - Client may permit its Permitted Users to use and access the Solutions, provided (i) Client remains responsible for compliance by each Permitted User with all of the terms and conditions of this Agreement, the Documentation, and any scope of use restrictions designated in the applicable Quote, and (ii) any use of the Solutions by a Permitted User is for the sole benefit of Client or its Affiliates. Only Client and its Permitted Users may use and access the Solutions, and use of the Solutions by Client and its Permitted Users in the aggregate must be within the scope of use restrictions designated in the applicable Quote, including the specified number of Purchased Units. Client acknowledges that personal data of Permitted Users is used by Webtrends in accordance with Webtrends' Privacy Statement (located at <https://www.webtrends.com/terms-policies/privacy/privacy-statement/>) and is processed and stored in the United States ("U.S.").

2.4 Accounts - Each Permitted User shall receive a user ID, which may not be shared. Client shall require that all Permitted Users keep their authentication factors (such as user ID and user credentials) strictly confidential and not share such information with any unauthorized person. Client shall be responsible for any and all actions taken in Client's Account by its Permitted Users, and shall immediately notify Webtrends of any unauthorized access to or use of its Account.

2.5 General Restrictions - Client shall not (and shall not permit any third party to):

- (a) rent, lease, provide access to, or sublicense any Solution to a third party (except for Permitted Users as authorized in Section 2.3 above), copy any Solutions (other than Tagging Methods as permitted in Section 2.2), or use any Solution for time sharing, hosting, service bureau or like purposes;
- (b) reverse engineer, decompile, or disassemble any Solution, or otherwise seek to obtain the source code or non-public APIs to any Solution, except to the extent expressly permitted hereunder or by Law (and then only upon advance notice to Webtrends);
- (c) modify any Solution or any Documentation, or create any derivative work from any of the foregoing, except for modifications to the Tagging Methods permitted in the Documentation;
- (d) remove or obscure any proprietary or other notices contained in any Solution (including notices contained in any reports or data presented through the Solutions);
- (e) publicly disseminate performance metrics or benchmarking information regarding any Solution;
- (f) attempt to gain unauthorized access to any Solution or other systems, networks, or data of Webtrends, or interfere with or disrupt the integrity or performance of any such Solution, systems, networks, or data;
- (g) use or knowingly permit the use of any security testing tools in order to probe, scan, or attempt to penetrate or ascertain the security or vulnerability of any Solution or other systems, networks, or data of Webtrends; or
- (h) use any Solution to retrieve, store, or transmit any malware (e.g., viruses, worms, time bombs, Trojan horses, or other harmful or malicious code, files, scripts, agents, or programs).

3. SOLUTIONS DATA

3.1 Collection of Solutions Data - Client may select specific data points for collection of Client Data through its Account in accordance with this Agreement or may rely on a default set of data points for collection of Client Data by a Solution. The Solutions Data may be aggregated or individualized as configured by Client and as further described in the Documentation. Further, the default set of data points varies based on the particular Solution. If Client uses the Solution to retrieve Third Party Data, the terms of Section 3.2 (Third Party Platforms) also apply. Notwithstanding anything to the contrary herein, Webtrends is not responsible in any way for Client Data after such Client Data is transmitted, copied, extracted, or removed from Webtrends' servers by Client or a Third Party Platform.

3.2 Third Party Platforms

- (a) **Use of Third Party Platforms.** Client is solely responsible for determining whether to use the Solutions with Third Party Platforms, including whether to collect Third Party Data from Third Party Platforms and whether to provide (or enable provision through the Solutions of) Client Data to Third Party Platforms, whether directly or via the Solutions. Webtrends shall have no responsibility for any Third Party Platforms, including for their security, functionality, operation, or integrity or for any use of Client Data by Third Party Platforms. Client acknowledges that Third Party Platforms may impose quotas or other usage restrictions. From time to time, Webtrends may change which Third Party Platforms may be used with the Solutions or discontinue integration with any Third Party Platforms.
- (b) **Authorization.** Webtrends may make available functionality that enables Client to access its own accounts on such Third Party Platforms through the Solutions. In such event, Client authorizes Webtrends to access such Third Party Platforms, collect Third Party Data, and use such Third Party Data as permitted in this Agreement. Client represents and warrants that such access, collection, and use by Webtrends will not violate any applicable terms of use, terms of service, or other requirements of such Third Party Platforms, including any restrictions on data transmission. Upon request from a Third Party Platform, at Webtrends' election, Client will provide confirmation of such authorization to such Third Party Platform or Webtrends may provide such confirmation in accordance with Webtrends' standard practice for such requests.

3.3 Rights in Client Data; License to Solutions Data - As between the parties, Client shall retain all right, title, and interest (including any and all intellectual property rights) in the Client Data, and Webtrends claims no right, title or interest in Client's Third Party Data. Subject to the terms of this Agreement, Client hereby grants to Webtrends a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit,

modify, create derivative works of, and perform and display in Client's Account the Solutions Data solely to the extent necessary to provide the Solutions to Client. Further, Webtrends may also periodically access Client's Account and Solutions Data to improve, support, and operate the Solutions (e.g., for quality assurance, benchmarking, technical support, or billing purposes).

3.4 Data Retention Policy - Webtrends retains processed data consisting of Client Data for certain Solutions in accordance with the Data Retention Policy attached as **Exhibit B**. Webtrends is not obligated to store or deliver any raw data included in Client Data. Webtrends expressly disclaims all other obligations with respect to data storage.

3.5 Client Obligations

- (a) **Generally**. Client is solely responsible for the accuracy, content, and legality of all Solutions Data and for its Client Applications and any exploitation or distribution thereof, including its relationships with any third party distributors or marketplaces through which it makes available Client Applications. Client shall ensure that Client's use of the Solutions and all Solutions Data is at all times compliant with Client's and any applicable Third Party Platform's privacy policies and all Laws. Client shall obtain all third party licenses, rights, clearances, consents and approvals that may be required for Client (and Webtrends on behalf of Client) to collect and use Solutions Data and represents and warrants that such collection and use will not violate any Laws or any intellectual property, publicity, privacy, or other rights of any third party.
- (b) **Prohibited Data**. The Solutions are not designed for processing of Prohibited Data and the default configurations of the Tagging Methods (as provided by Webtrends) do not collect Prohibited Data. Notwithstanding any other provision included herein, Client will not configure the Tagging Methods or use the Solutions to collect, upload, retrieve, transmit, store, analyze, create, or deliver Prohibited Data and will not otherwise provide Prohibited Data to Webtrends. Client acknowledges that Webtrends is not a Business Associate or subcontractor (as those terms are defined in HIPAA). Webtrends shall have no liability under this Agreement for Prohibited Data, notwithstanding anything to the contrary herein.
- (c) **Configuration of Regional Option**. Webtrends offers three options with respect to the geographical locations of the data collection centers that will collect Client Data: Global, U.S.-EU only, and U.S. only. Client will select a regional option by implementing the Tagging Methods for the selected option on its Client Applications. Client acknowledges the selection and use of a regional option is controlled by the implementation of the applicable Tagging Methods, and Client will be solely responsible for such implementation. If Client chooses to change the selected regional option, Client will be responsible for implementing Tagging Methods specific to the new regional option on its Client Applications. When selecting a restricted geographical option (i.e., U.S.-EU only or U.S. only), Client acknowledges it will forego the collection and content delivery performance advantages offered by Webtrends' data collection centers located in countries outside the selected geographical option. Webtrends shall use commercially reasonable efforts to ensure that Client Data will not transit through or be stored in locations not allowed based on the selected regional option.

3.6 Content Delivery Network (CDN) - Webtrends may make available a third party content delivery network ("CDN") for Client's use in (i) managing Client's use of Tagging Methods for the Solutions or (ii) storing Client Content for the Optimize Solution. Use of the CDN is at Client's election. Because the CDN is operated by a third party, the terms regarding Webtrends' security procedures and SLA set forth in **Exhibits C and D**, respectively, do not apply to the CDN.

4. OPTIMIZE SOLUTION - If Client has purchased a subscription to the Optimize Solution as specified in the applicable Quote, this Section 4 applies. The Optimize Solution enables Client to run A/B, multivariate, and personalization tests of Client Content on specific types of Client Applications and measures and reports end users' engagement with such content and Client Applications. All data collected by the Optimize Solution is described in the Documentation and constitutes Client Data. As between the parties, Client shall retain all right, title and interest (including any and all intellectual property rights) in and to any Client Content made available by Client for its tests using the Optimize Solution. Client hereby grants Webtrends a non-exclusive, worldwide, royalty-free right and license to use, copy, store, transmit, modify, create derivative works of, publicly perform and display, and distribute any Client Content provided to Webtrends solely for purposes of providing the Optimize Solution to Client pursuant to the applicable Quote. Client Content is included in Solutions Data for purposes of Client's obligations in Sections 3 (Solutions Data) and 13.2 (Indemnification by Client).

5. SOLUTIONS SECURITY AND DATA PROTECTION & PRIVACY

5.1 Solutions Security - Webtrends agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration, or disclosure of the Client Data, as further described in **Exhibit C** (Solutions Security). Except to the extent caused by Webtrends' breach of this **Exhibit C**, Webtrends shall have no responsibility for errors in transmission, unauthorized third-party access, or other causes beyond Webtrends' control.

5.2 Protection of Personal Data - Subject to Section 3.5(b) (Prohibited Data), as part of its authorized use of the Solutions, Client may enable the Tagging Methods to collect certain personal data from users of Client Applications. Without limiting its obligations in Section 5.1 (Solutions Security), Webtrends agrees to process personal data only for the purpose of performing this Agreement and in accordance with Client's instructions (as set forth in this Agreement and any applicable Order Form or SOW) and applicable Laws.

Further, for personal data that is subject to the EU Directive:

- a.** For so long as the U.S. Department of Commerce maintains the U.S.-EU Safe Harbor framework, Webtrends self-certifies that: (i) it complies with the Safe Harbor principles and meets the requirements of the U.S.-EU Safe Harbor framework and (ii) all Client Data transferred from the EU to the U.S. will be processed in accordance with those requirements.
- b.** Webtrends will self-certify in the replacement framework for Safe Harbor between the U.S. Department of Commerce and European Commission if and when such framework becomes available (so-called "Safe Harbor 2.0").

c. If no Safe Harbor framework is available, then at Client's request, Webtrends will enter into another adequate method for transfer of personal data to a third country that is approved by the European Commission and mutually agreed by the parties.

The terms "controller", "process", "processor", and "personal data" have the meanings given to them in the EU Directive. The parties acknowledge that, pursuant to the EU Directive and applicable data protection Laws, Client is the controller and Webtrends is the processor.

6. OWNERSHIP - This is a subscription agreement for access to and use of the Solutions. Client acknowledges that it is obtaining only a limited right to the Solutions and that irrespective of any use of the words "purchase", "sale", or like terms hereunder, no ownership rights are being conveyed to Client under this Agreement. Client agrees that Webtrends or its licensors retain all right, title and interest (including all patent, copyright, trademark, trade secret, and other intellectual property rights) in and to the Solutions (including Tagging Methods, APIs, SDKs and Documentation), Deliverables (excluding Client Materials), all report templates and pre-existing content and materials of Webtrends, all related and underlying technology, documentation, work product, tools, designs, methodologies, processes, techniques, ideas, and know-how, and all derivative works, modifications, or improvements of any of the foregoing, as well as all comments, questions, suggestions, or other feedback relating to the Solutions or Professional Services that Client submits to Webtrends (collectively, "**Webtrends Technology**"). Except as expressly set forth in this Agreement, no rights in any Webtrends Technology are granted to Client. Further, Client acknowledges that the Solutions are offered as an on-line, Software-as-a-Service (SaaS) solution, and that Client has no right to obtain a copy of any underlying code or technology in any Solution, other than Tagging Methods.

7. ORDER TERM, FEES & PAYMENT

7.1 Order Term and Renewals - Unless otherwise specified on the applicable Quote, each Order Term shall automatically renew for additional twelve (12) month periods unless either party gives the other written notice of termination at least thirty (30) days prior to expiration of the then-current Order Term.

7.2 Fees and Payment - All fees are as set forth in the applicable Quote and shall be paid by Client in accordance with the invoice schedule and in the currency set forth in the applicable Quote (and if none, within thirty (30) days of the date of applicable invoice and in U.S. currency). Except as expressly set forth in Section 8.2 (Termination for Cause), Section 9.1 (Limited Warranty), Section 11.4 (Limited Professional Services Warranty), and Section 13.1 (Indemnification by Webtrends), all fees are non-refundable. The rates in the Quote are valid for the initial twelve (12) month period of each Order Term. Client is required to pay any sales, use, Goods and Services Tax (GST), value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Webtrends, and all such taxes and levies are excluded from any rates or prices provided by Webtrends. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by Law, whichever is less.

7.3 Suspension of Solutions - If (a) Webtrends has sent Client a payment reminder for an overdue payment, and Client fails to pay the amount due within seven (7) days after receiving such payment reminder, or (b) Client has breached its obligations under Section 3.5 (Client Obligations), then, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Webtrends reserves the right to suspend Client's access to the applicable Solution, content delivery and any related support, or Professional Services, without liability to Client, until payment has been made or the breach has been cured. Prior to suspending Client's access for Client's breach of Section 3.5, Webtrends will use reasonable efforts to provide Client with notice and a reasonable opportunity to cure, unless Webtrends reasonably determines that such breach may cause harm to other clients or threaten the security or integrity of a Solution, in which case suspension may be immediate.

7.4 Trial Subscriptions - If Client receives free access or a trial or evaluation subscription to the Solutions (a "**Trial Subscription**"), then Client may use the Solutions in accordance with the terms and conditions of this Agreement and the applicable Quote for the period designated in such Quote or otherwise by Webtrends (and if not designated, then for thirty (30) days) ("**Trial Period**"). Trial Subscriptions are permitted solely for Client's use to determine whether to purchase a full subscription to the Solutions. Client may not use a Trial Subscription for any other purpose, including without limitation for competitive analysis. At the end of the Trial Period, the Trial Subscription will expire and Client will have the option to purchase a full subscription to the Solutions. If Client purchases a full subscription, all of the terms and conditions in this Agreement will apply to such purchase and the use of the Solutions unless otherwise specified in the Quote for the Trial Subscription. Webtrends has the right to terminate a Trial Subscription at any time for any reason. The Solutions may have a mechanism that limits access to the Trial Period and Webtrends may otherwise restrict certain product functionality during the Trial Period (including limiting Purchased Units or other usage as may be specified by Webtrends). Client shall not attempt to circumvent any such mechanism or restriction. Notwithstanding Section 3.4 (Data Retention Policy) or **Exhibit B** (Data Retention Policy), Webtrends has no obligation to retain Client Data used with a Trial Subscription during or after the Trial Period. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DURING THE TRIAL PERIOD THE SOLUTIONS ARE PROVIDED "AS IS" AND WEBTRENDS WILL HAVE NO WARRANTY OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS UNLESS OTHERWISE SPECIFIED IN THE QUOTE.

8. TERM AND TERMINATION

8.1 Term - This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Order Terms.

8.2 Termination for Cause - Either party may terminate this Agreement (including all related Quotes) if the other party:

- (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after written notice;
- (b) ceases operation without a successor; or
- (c) seeks protection under any bankruptcy, insolvency event, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

Upon termination by Client for Webtrends' breach in accordance with this Section 8.2, Webtrends shall promptly refund to Client any such Solution fees already paid with respect to the terminated portion of the applicable Order Terms. Upon termination by Webtrends for Client's breach, Client shall pay Webtrends for the total fees contractually committed for all Order Terms.

8.3 Effect of Termination - Upon any expiration or termination of this Agreement, Client shall:

- (a) immediately cease any and all use of and access to its Account and the Solutions (including any and all related Webtrends Technology);
- (b) Erase (or, at Webtrends' request, return) any and all copies of the Documentation, any Webtrends-related passwords or access codes, and any other Webtrends' Confidential Information in its possession; and
- (c) remove all Tagging Methods from Client Applications and otherwise discontinue use thereof.

Upon request, Client shall certify to Webtrends in writing that it has fully complied with the foregoing requirements. Client acknowledges that, following termination, it shall have no further access to its Account or any Solutions Data, and that Webtrends may delete Client's Account and Erase any Solutions Data in its possession at any time, except for backup copies kept for disaster recovery purposes or as required to comply with Laws. Neither party shall have any liability resulting solely from a permitted termination of this Agreement in accordance with its terms. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

8.4 Survival - The following Sections shall survive any expiration or termination of this Agreement: 2.5 (General Restrictions), 3.4 (Data Retention Policy), 6 (Ownership), 7.2 (Fees and Payment), 8 (Term and Termination), 9.2 (Warranty Disclaimer), 11.2 (Rights to Deliverables) (solely with respect to Design Deliverables, if applicable), 12 (Limitation of Remedies and Damages), 13 (Indemnification), 14 (Confidential Information), and 16 (General Terms).

9. WARRANTY AND DISCLAIMER

9.1 Limited Warranty - Webtrends warrants, for Client's benefit only, that the Solutions will operate in substantial conformity with the applicable Documentation. Webtrends' sole liability (and Client's sole and exclusive remedy) for any breach of this warranty shall be, in Webtrends' sole discretion and at no charge to Client, to use commercially reasonable efforts to correct the reported non-conformity or, if Webtrends determines (in its sole discretion) such remedy to be impracticable or fails to correct the non-conformity, either party may terminate the applicable Order Term and Client shall receive as its sole remedy a refund of any Solution fees that Client already paid with respect to the terminated portion of the applicable Order Term.

The limited warranty set forth in this Section 9.1 shall not apply:

- (a) unless Client notifies Webtrends within thirty (30) days following the date on which Client first noticed the non-conformity;
- (b) if the error was caused by misuse, unauthorized modifications, or third-party hardware, software or services; or
- (c) to any use of the Solutions provided on a no-charge or evaluation basis (e.g., proof-of-concept or Trial Subscriptions).

9.2 Warranty Disclaimer - EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT, THE SOLUTIONS AND ALL RESULTS AND REPORTS GENERATED THEREFROM AND ANY PROFESSIONAL SERVICES ARE PROVIDED "AS IS". NEITHER WEBTRENDS NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT (BUT FOR CLARITY THIS DISCLAIMER OF WARRANTIES OF NONINFRINGEMENT DOES NOT LIMIT WEBTRENDS' INDEMNIFICATION OBLIGATIONS IN SECTION 13). WITHOUT LIMITING WEBTRENDS' EXPRESS OBLIGATIONS IN SECTION 5 (SOLUTIONS SECURITY & PRIVACY), 9.1 (LIMITED WARRANTY) OR 10 (SUPPORT SERVICES; SLA), WEBTRENDS DOES NOT WARRANT THAT CLIENT'S USE OF THE SOLUTIONS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT IT WILL REVIEW THE SOLUTIONS DATA FOR ACCURACY, THAT IT WILL PRESERVE OR MAINTAIN THE SOLUTIONS DATA WITHOUT LOSS, OR THAT THE SOLUTIONS WILL MEET CLIENT'S BUSINESS GOALS OR OTHER REQUIREMENTS OR EXPECTATIONS (OR, IF ACHIEVED, THAT SUCH RESULTS WILL BE SUSTAINABLE). WEBTRENDS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF WEBTRENDS (INCLUDING BUT NOT LIMITED TO ANY THIRD PARTY PLATFORM). CLIENT MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF SUCH STATUTORY RIGHTS, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

10. SUPPORT SERVICES; SLA - During the applicable Order Terms, (a) Webtrends shall provide end user support in accordance with the then current version of the terms located at <http://webtrends.com/support/support-plans> (or such other URL as Webtrends may provide from time to time) for the support and maintenance plan specified in the applicable Quote, and (b) the Solutions shall be subject to the Service Level Agreement ("SLA") attached hereto as **Exhibit D**.

11. PROFESSIONAL SERVICES

11.1 Provision and Payment - Webtrends shall provide a Technical Account Manager and other Professional Services if purchased in the applicable Quote or SOW. The Professional Services may include (i) Configuration Services and/or (ii) Digital Marketing Services. The scope of the Professional Services, and the fees for the Professional Services (whether on a fixed-fee or hourly rate basis), shall be as set forth in an applicable Quote or SOW.

11.2 Rights to Deliverables - Client may use any Deliverables solely in support of its authorized use of the applicable Solution, subject to the same terms and conditions that apply to such Solution and any additional terms in the applicable Quote or SOW. As an exception to the preceding sentence, for any Design Deliverables, effective upon full and final payment of all fees and expenses owing to Webtrends, Webtrends grants Client a non-exclusive, perpetual, worldwide, non-transferable, royalty-free license to use, reproduce, publicly display and perform, distribute, and create derivative works of the Design Deliverables for Client's business purposes. While Client may continue to use the Design Deliverables after termination or expiration of this Agreement, such continued use is "AS IS", with no warranty or other obligation from Webtrends.

11.3 Client Materials - Client shall provide Webtrends with access to Client Materials and hereby grants Webtrends a limited right to use Client Materials solely for the purpose of performing the Professional Services hereunder. Client represents and warrants that it has all rights necessary in the Client Materials to provide them to Webtrends for such purpose.

11.4 Limited Professional Services Warranty - Webtrends warrants that the Professional Services will be of a professional quality and conform to generally prevailing industry standards. Client must give written notice of any material breach of the foregoing warranty within thirty (30) days from the date the Professional Services are completed. In such event, at Webtrends' sole discretion, Webtrends shall either:

- (a) use commercially reasonable efforts to re-perform the Professional Services in a manner that conforms to the foregoing warranty; or
- (b) if Webtrends fails to re-perform or decides not to re-perform the Professional Services, refund to Client the portion of fees paid by Client to Webtrends for the nonconforming Professional Services.

The foregoing procedures shall constitute Webtrends' sole liability (and Client's sole and exclusive remedy) for any breach of the warranty in this Section 11.4.

12. LIMITATION OF REMEDIES AND DAMAGES

12.1 Consequential Damages Waiver - NEITHER PARTY (NOR ITS LICENSORS) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, ANY LOSS OF USE, OR INTERRUPTION OF BUSINESS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

12.2 Liability Cap - EXCEPT FOR EXCLUDED CLAIMS, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY'S AND ITS LICENSORS' ENTIRE LIABILITY TO THE OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CLIENT TO WEBTRENDS DURING THE PRIOR TWELVE MONTHS UNDER THIS AGREEMENT.

12.3 Excluded Claims - "Excluded Claims" means (a) amounts payable to third parties by Client pursuant to Section 13.2 (Indemnification by Client) or (b) any claim arising from Client's breach of Section 2.5 (General Restrictions) or Section 3 (Solutions Data).

12.4 Failure of Essential Purpose - The parties agree that the limitations specified in this Section 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

13. INDEMNIFICATION

13.1 By Webtrends - Webtrends shall defend Client from and against any claim by a third party alleging that Webtrends' proprietary technology used in the performance of the Solutions, when used as authorized under this Agreement, actually infringes a U.S. or Great Britain ("GBR") patent, U.S. or GBR copyright, or U.S. or GBR trademark and shall indemnify and hold harmless Client from and against any damages and costs awarded against Client or agreed in settlement by Webtrends (including reasonable legal fees) resulting from such claim.

If Client's use of any Solution is (or in Webtrends' opinion is likely to be) enjoined, if required by settlement, or if Webtrends determines such actions are reasonably necessary to avoid material liability, Webtrends may, in its sole discretion:

- (a) substitute substantially functionally similar products or services;
- (b) procure for Client the right to continue using the Solution; or
- (c) if (a) and (b) are not commercially reasonable, terminate the Agreement and refund to Client any Solution fees that Client already paid with respect to the terminated portion of the applicable Order Terms.

The foregoing indemnification obligation of Webtrends shall not apply:

- (1) if the Solution is modified by any party other than Webtrends, but solely to the extent the alleged infringement is caused by such modification;
- (2) if the Solution is combined with products or processes not provided by Webtrends, but solely to the extent the alleged infringement is caused by such combination;
- (3) to any unauthorized use of the Solution;
- (4) to any action arising as a result of Solutions Data or any third-party deliverables or components contained within the Solution;
- (5) to any release or version of the Tagging Methods other than the then-current release or version; or
- (6) if Client settles or makes any admissions with respect to a claim without Webtrends' prior written consent.

THIS SECTION 13.1 SETS FORTH WEBTRENDS' AND ITS SUPPLIERS' SOLE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM THAT WEBTRENDS' PROPRIETARY TECHNOLOGY USED IN THE PERFORMANCE OF THE SOLUTIONS INFRINGES A U.S. OR GBR PATENT, U.S. OR GBR COPYRIGHT, OR U.S. OR GBR TRADEMARK.

13.2 By Client - Client shall defend Webtrends from and against any claim by a third party arising from or relating to:

- (a) any Solutions Data or Client Application or any breach or alleged breach by Client of Section 3.5 (Client Obligations); or
- (b) any service or product offered by Client through the Client Applications,

and shall indemnify and hold harmless Webtrends from and against any damages awarded against Webtrends or agreed in settlement by Client (including reasonable legal fees) resulting from such claim.

13.3 Indemnification Process - The obligations of each indemnifying party are conditioned upon receiving from the party seeking indemnification:

- (a) prompt written notice of a claim (but in any event notice in sufficient time for the indemnifying party to respond without prejudice);
- (b) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the claim; and

(c) all reasonable necessary cooperation of the indemnified party.

The indemnified party may participate in the defense of any claim with counsel of its own choosing at its expense. The indemnifying party may not settle a claim without the indemnified party's prior written consent unless such settlement unconditionally releases the indemnified party from all liability and does not require the indemnified party to take or refrain from taking any action (except with respect to use or non-use of the Solutions or allegedly infringing materials).

14. CONFIDENTIAL INFORMATION - Each party (as "**Receiving Party**") agrees that all code, inventions, know-how, business, technical, and financial information that it obtains from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Without limiting the foregoing, any Webtrends Technology, performance information relating to the Solutions, and the terms and conditions of this Agreement and all Quotes and SOWs shall be deemed Confidential Information of Webtrends without any marking or further designation. Except as expressly authorized herein, the Receiving Party will:

- (a) hold in confidence and not disclose any Confidential Information to third parties; and
- (b) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement.

The Receiving Party may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know (including, for Webtrends, the subcontractors referenced in Section 16.10), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 14 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 14. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document:

- (1) was rightfully in its possession or known to it prior to receipt of the Confidential Information;
- (2) is or has become public knowledge through no fault of the Receiving Party;
- (3) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or
- (4) is independently developed by employees of the Receiving Party who had no access to such information.

The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore, that upon any such disclosure by the Receiving Party, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

15. MARKETING - During the term of the Agreement, Webtrends may use Client's name, logos and trademarks to identify Client as a customer on Webtrends' website, social media and other marketing materials.

16. GENERAL TERMS

16.1 Assignment - This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement except upon the advance written consent of the other party. Notwithstanding the foregoing, a party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities, provided that, in Client's case, the assignee is not a competitor of Webtrends. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 16.1 will be null and void.

16.2 Severability - If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

16.3 Governing Law; Jurisdiction and Venue - This Agreement shall be governed by the laws of the State of Oregon and the U.S. without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts located in Portland, Oregon and both parties hereby submit to the personal jurisdiction of such courts.

16.4 Attorneys' Fees and Costs - The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

16.5 Notice - Any notice or communication required or permitted under this Agreement shall be in writing to the parties at the addresses set forth on the Quote or at such other address as may be given in writing by either party to the other in accordance with this Section and shall be deemed to have been received by the addressee:

- (a) if given by hand, immediately upon receipt;
- (b) if given by overnight courier service, the first business day following dispatch; or
- (c) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

Notices and communications may also be provided via electronic mail (which notices and communications shall be deemed to have been received immediately upon receipt), except that neither party shall provide any notice or communication related to Section 8 (Term and Termination), Section 9.1 (Limited Warranty) or Section 13 (Indemnification) via electronic mail.

16.6 Amendments; Waivers - Except as otherwise expressly set forth herein, no supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing

signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Client will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

16.7 Entire Agreement - This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

16.8 Updates - Client acknowledges that the Solutions are on-line, subscription-based products and that, in order to provide improved customer experience, Webtrends may make changes to the Solutions (including the Tagging Methods), and Webtrends will update the applicable Documentation accordingly. The support, data retention, security, and SLA terms described in Section 10 (Support Services; SLA), **Exhibit B** (Data Retention Policy), **Exhibit C** (Solutions Security), and **Exhibit D** (SLA) may be updated from time to time upon reasonable notice to Client to reflect process improvements or changing practices (but the modifications will not materially decrease Webtrends' obligations as compared to those reflected in such terms as of the Effective Date).

16.9 Force Majeure - Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

16.10 Subcontractors - Webtrends may use the services of subcontractors and permit them to exercise the rights granted to Webtrends in order to provide the Solutions and Professional Services under this Agreement, provided that Webtrends remains responsible for:

- (a) compliance of any such subcontractor with the terms of this Agreement; and
- (b) the overall performance of the Solutions as required under this Agreement.

16.11 Independent Contractors - The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

16.12 Export Control - In its use of the Solutions, Client agrees to comply with all export and import laws and regulations of the U.S. and other applicable jurisdictions. Without limiting the foregoing,

- (a) Client represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country;
- (b) Client shall not (and shall not permit any of its users to) access or use the Solutions in violation of any U.S. export embargo, prohibition or restriction; and
- (c) Client shall not submit to the Solutions any information that is controlled under the U.S. International Traffic in Arms Regulations.

16.13 Government End-Users - Elements of the Solutions are commercial computer software. If the user or licensee of the Solutions is an agency, department, or other entity of the U.S. Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Solutions, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Solutions were developed fully at private expense. All other use is prohibited.

16.14 No High Risk Use - The Solutions and all components thereto are not fault-tolerant. The Solutions and all components thereto are not designed or intended for use in any situation where failure or fault of any kind of the Solutions or any component could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("**High Risk Use**"). Client is not licensed to use the Solutions or any component thereof in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug and Cosmetic Act. Client agrees not to use the Solutions, or any component thereof, in or in connection with, any High Risk Use.

16.15 Counterparts. This Agreement may be executed in counterparts (including execution by electronic signature, pdf or other electronic transmission), each of which will be deemed an original and legally binding and all of which together will be considered one and the same agreement.

Exhibit A

Purchased Unit Definitions

Webtrends Analytics:

“**Server Call**” is the unit of measurement for usage of the Webtrends Analytics Solution. A Server Call is incurred when a request is sent to the data collection servers for the Webtrends Analytics Solution, when such request is sent by the Tagging Methods. “**Server Call Entitlement**” means the number of Server Calls purchased in the Quote during the Order Term. If, during the Order Term, Client’s actual usage of the Webtrends Analytics Solution exceeds the Server Call Entitlement, Client shall either (a) purchase additional Server Calls at the rate set forth in the Quote, or (b) pay Continuation Fees to Webtrends. “**Continuation Fees**” will be determined by multiplying the number of Server Calls collected in increments of one thousand, and any fractions thereof, in excess of the Server Call Entitlement by the Cumulative CPM. “**Cumulative CPM**” for Server Calls means the cost per thousand Server Calls as set forth in the Quote. Upon the expiration or earlier termination of the Order Term, the Server Call Entitlement shall expire. All additional Server Calls purchased in the middle of any Order Term will be co-terminus with the then current Order Term.

Webtrends Optimize:

Client’s right to access and use the Solution is limited to one of the following usage packages. Whether Client is purchasing the Optimize Solution under package 1 or package 2 will be specified in the Quote.

- (1) If the Quote indicates that Client has purchased a specific number of Optimize Events then Client’s use of the Solution is limited to the testing, segmenting and targeting up to the number of Optimize Events as set forth in the Quote (“**Optimize Event Entitlement**”). An Optimize Event is incurred for each call to the Optimize Solution that modifies or tracks the Client Application visitor’s environment in response to an Optimize testing and/or targeting scenario. Conversion events are counted. Webtrends essential care support and Optimize data retention are included at no additional charge during the Order Term. Webtrends shall have no obligation to return, and Client shall have no right to receive, any portion of the fees in the event that the actual usage by Client of Optimize Events is below the Optimize Event Entitlement. If during the Order Term, Client’s actual usage of the Optimize Solution exceeds the Optimize Event Entitlement, Client shall either (a) purchase additional Optimize Events at the rate set forth in the Quote, or (b) pay Continuation Fees to Webtrends. “**Continuation Fees**” will be determined by multiplying the number of Optimize Events collected in increments of one thousand and any fractions thereof, in excess of the Optimize Event Entitlement by the Cumulative CPM. “**Cumulative CPM**” for Optimize Events means the cost per thousand Optimize Events as set forth in the Quote. Upon the expiration or earlier termination of the Order Term, the Optimize Event Entitlement shall expire. All additional Optimize Events purchased in the middle of any Order Term will be co-terminus with the then current Order Term.
- (2) If the Quote does not indicate that Client has purchased a specific number of Optimize Events then Client has purchased an Optimize Hourly Package. An “**Optimize Hourly Package**” includes usage of the Webtrends Optimize platform and unlimited Optimize Events, the number of Professional Service hours specified in the Quote and any Add-On features specified in the Quote. Webtrends will not refund any fees for Professional Service hours which are not used. Client’s use of the Webtrends Optimize platform is limited to testing, segmenting and targeting Client Applications. Webtrends essential care support and Optimize data retention are included at no additional charge during the Order Term.

Webtrends Segments:

Client’s right to access and use the Webtrends Segments Solution is limited to (i) analyzing the data collected from Client Applications, (ii) tracking and loading up to the number of Events set forth in the Quote (“**Event Entitlement**”), and (iii) accessing, viewing and downloading Solutions Data. “**Event**” is the unit of measurement for usage of the Webtrends Segments Solution. An Event is incurred when a visitor activity or a transaction, as defined by Client, is tracked and loaded in the Webtrends database. Webtrends essential care support and standard data retention are included at no additional charge during the Order Term.

Webtrends shall have no obligation to return, and Client shall have no right to receive, any portion of the fees if Client’s actual usage of Events is below the Event Entitlement. If, during the Order Term, Client’s actual usage of the Webtrends Segments Solution exceeds the Event Entitlement, Client shall either (a) purchase additional Events at the rate set forth in the Quote, or (b) pay Continuation Fees to Webtrends. “**Continuation Fees**” will be determined by multiplying the number of Events collected in increments of one thousand and any fractions thereof, in excess of the Event Entitlement by the Cumulative CPM for the Order Term. “**Cumulative CPM**” for Events means the cost per thousand Events as set forth in the Quote. Upon the expiration or earlier termination of the Order Term, the Event Entitlement shall expire. All additional Events purchased in the middle of any Order Term will be co-terminus with the then current Order Term.

Webtrends Streams:

Client’s right to access and use the Webtrends Streams Solution is limited to (i) collecting, accessing and retrieving Streams Data, up to the number of Streams Events set forth in the Quote (“**Streams Event Entitlement**”) and (ii) establishing the number of Concurrent Connections specified in the Quote.

Webtrends shall have no obligation to return, and Client shall have no right to receive, any portion of the fees if Client's actual Streams Event usage is below the Streams Event Entitlement. If, during the Order Term, Client's actual usage of Webtrends Streams exceeds the Streams Event Entitlement, Client shall either (i) purchase additional Streams Events, or (ii) pay Continuation Fees to Webtrends. Upon the expiration or earlier termination of the Order Term, the Streams Event Entitlement shall expire. All additional Streams Events purchased in the middle of any Order Term will be co-terminus with the then current Order Term. Notwithstanding anything to the contrary within the Agreement, Webtrends shall have no obligation to (i) keep and store Streams Data, (ii) store or deliver any raw data included in Streams Data even if Client has purchased access to raw data for another Solution.

The following definitions are used with respect to Webtrends Streams: "**Continuation Fees**" will be determined by multiplying the number of Streams Events collected in increments of one thousand, and any fractions thereof, in excess of the Streams Event Entitlement by the Cumulative CPM. "**Cumulative CPM**" for Streams Events means the cost per thousand Streams Events, as set forth in the Quote. "**Streams Data**" means the data collected via Webtrends Streams; "**Concurrent Connection**" is a usage limitation for Webtrends Streams, and means the number of connections between Client's computer network and the Webtrends Streams server which may occur concurrently, where a connection means a socket connection between Webtrends Streams and any Client Application; "**Streams Event**" is the unit of measurement for usage of Webtrends Streams. A Streams Event is counted against Client's Streams Event Entitlement when any event configured by or on behalf of Client to be collected, is collected and delivered to the Webtrends Streams infrastructure, and then such event is consumed by a Client Application. A Streams Event is counted against Client's Streams Event Entitlement when such Streams Event is consumed by any Client Application for each unique data stream.

Add-Ons:

All Add-Ons purchased in the middle of any Order Term, under (1) or (2), will be pro-rated for the remainder of the then-current Order Term and will be co-terminus with the then-current Order Term. "**Add-On**" means any Solution purchased as an add-on in a mutually executed quote, purchase order, or invoice.

Exhibit B

Data Retention Policy

Last Updated: May 14, 2015

Webtrends shall retain Client Data in accordance with the following Data Retention Policy.

1. Log File Retention for Analytics and Segments Collected Data

Analytics SmartSource log files are retained for 3 months from the date of file creation. Segments SmartSource log files are retained for the current month plus 3 months from the date of file creation. Webtrends Analytics and Webtrends Segments clients who want copies of the raw logs may purchase the SmartSource File Retrieval option for an additional annual fee. SmartSource files will be available for download for rolling 14 days.

2. Data Retention for Analytics Report Data

2.1 Standard Data Retention.

Standard Data Retention is included with the base package of Webtrends Analytics®, and includes 120 daily, 56 weekly, 24 monthly, 12 quarterly, and 3 yearly reports for new accounts. Existing accounts may have different retention per their contracts. With Standard Data Retention, Client has the ability to review daily/hourly report data as far back as 4 months.

2.2 Extended Data Retention.

Extended Data Retention provides Client with the capability to look back in time at analyzed data for historical information. For an additional annual fee, Extended Data Retention provides the Client with 400 daily, 110 weekly, 38 monthly, 40 quarterly, and unlimited yearly reports. With Extended Data Retention, Client has the ability to review daily/hourly report data for detailed analysis of season or cyclical planning as far back as 13 months.

Comparison of Data Retention Options

Report Type	Standard Data Retention	Extended Data Retention
Daily reports	120 days	400 days
Weekly reports	56 weeks	110 weeks
Monthly reports	24 months	38 months
Quarterly reports	12 quarters	40 quarters
Yearly reports	3 years	Unlimited

Table Limits. Data tables within the Webtrends Solutions have certain table limits, such as number of entries on 10 top page tables or visitor history tables.

3. Data Retention for Segments Processed Data

By default, Webtrends Segments® data is retained according to the following schedule:

Data Type	Retention
Ad Clickthrough, Conversion, Media, On-Site Search, Purchase, Search Clickthrough, Visit, Visitor	13 Months
Content Group View, Custom, Product View, Scenario, Shopping Cart Add	3 Months

4. Data Retention for Webtrends Optimize® Report Data

Webtrends Optimize® report data is retained for 13 months, after which the Optimize report data may be Erased by Webtrends and no longer available to the Client.

5. Data Retention for Webtrends Explore™ Data

Webtrends Explore™ data is retained for 13 months, after which time the Webtrends Explore data is Erased by Webtrends and no longer available to the Client.

6. Data Retention for Webtrends Streams® Data

Webtrends Streams® data is transitory only and is not retained by Webtrends.

Exhibit C

Solutions Security

1. Definitions

Capitalized terms not included in this Exhibit C (Solutions Security) are defined in the Agreement.

- (a) “**Information Technology Resources**” – means all facilities and equipment used for delivering the Solutions.
- (b) “**Personnel**” – means employees, consultants, temporary workers, or any person with access to Client Data and/or Information Technology Resources.

2. Information Security Management

Webtrends shall maintain for the Solutions a documented information security management system based on ISO 27002, shall review and update it as necessary annually, and shall have an Information Security and Access Policy that explicitly addresses the confidentiality, integrity, and availability of Client Data and Information Technology Resources. Policies shall be approved by senior management, communicated to all Personnel, and clearly state the consequences of non-compliance.

Webtrends CSO, VP Security & Privacy coordinates all security and privacy activities within Webtrends. Responsibilities of this position include:

- Driving security initiatives
- Policy creation and review
- Security planning and program management
- Review effectiveness of the security program
- Coordinate Webtrends security incident response plan
- Perform annual security and privacy assessment and reviews

Webtrends shall have appropriate staffing (e.g., security manager or group) to foster, coordinate and implement information security, and shall segregate functions and duties commensurate to the scale of the organization.

Webtrends maintains a general Information Security Policy and comprehensive technical policies for physical and logical security.

Webtrends Information Security Policy and Webtrends SaaS Operations policies are reviewed, and updated as needed, at least once annually. Other more tactical policies are updated as needed. Webtrends security measures are commensurate to the sensitivity of the data processed.

In support of teleworking, Webtrends deploys remote access with strong encryption and authentication mechanisms across the Internet (using a commercial VPN product). Webtrends requires two-factor authentication for remote access to the corporate network.

3. Human Resources

Webtrends shall clear Personnel with access to Client Data or Information Technology Resources through a background screening covering, to the extent permitted by Law, criminal check, references, employment history, financial scan, education, and verification of entitlement to work in the country of residence, and shall ensure that non-disclosure and/or confidentiality agreements are signed by all Personnel. Webtrends’ policy prohibits employees from using Confidential Information (including Client Data) other than for legitimate business purposes, such as providing technical support, and this obligation continues after their employment ends.

Upon hire and annually thereafter, Webtrends shall provide Personnel with security and privacy training including, without limitation, the handling of sensitive or confidential information and Client Data, employees’ responsibility for such data, risk of information sharing with unidentified callers, phishing attacks, and use of security tools such as anti-malware solutions.

Webtrends shall maintain a formal termination or change of employment process that includes return of any and all Webtrends and Client assets, disables or adjusts access rights, and reminds ex-employees of their remaining employment restrictions and contractual obligations.

4. Asset Management

Webtrends shall logically separate Client Data from its clients, and classify it as highly confidential. Webtrends information classification shall afford Client Data the same or higher level of security as it does its own highly confidential information.

Webtrends shall use commercially reasonable efforts to securely destroy all electronic media utilized in the Webtrends Solutions, consistent with NIST Guidelines for Media Sanitization (Special Pub 800-88), in order to prevent information leakage, and shall dispose of all printed Confidential Information, including Client Data, in secured containers for shredding.

5. Access Control

Webtrends shall provide security-enabled identification, authentication, and authorization mechanisms for Client access to its Solutions and Personnel access to the backend infrastructure, and all passwords shall be securely hashed.

All systems used for the Solutions are managed under the policies of the Webtrends SaaS Operations team, which is separate (both from a network domain perspective, and from a staffing perspective) from corporate network resources. All access is limited to the least privilege needed and requires authentication. Access logs shall be reviewed at least quarterly.

6. Cryptography

All authenticated access to Webtrends Solutions is over secure protocols such as HTTPS (HTTP over TLS), SFTP (FTP over SSH). TLS transfers are terminated at the load balancer within the Webtrends production network.

For the initial data collection, Webtrends JavaScript code automatically detects the protocol used for the source page and uses the same; i.e. it defaults to HTTPS for secure pages and HTTP for non-secure pages. Clients may override these defaults to force the use of HTTPS for all pages.

7. Physical and Environmental Controls

Webtrends shall have physical and environmental controls in place designed to protect Client Data and Information Technology Resources designed to control access to and safeguard facilities where Client Data may be collected, processed, and/or stored, including, at a minimum: restricting access to data centers and any corporate facility to authorized Personnel; preventing unauthorized access; monitoring availability of adequate power and environmental controls such as ventilation; and 24x7 monitoring intended to protect Information Technology Resources.

Deployment, updates and maintenance are performed by Webtrends employees. In the rare instance where a hardware manufacturer employee must be involved, this individual must be accompanied in the data center.

8. Operations Security

Webtrends shall have documented procedures in-place that include at a minimum:

- security controls measures for all systems in the environment;
- hardening - disabling of all non-essential processes and ports, removing all default users;
- patching deployed promptly on all applicable systems per manufacturer recommendation, and no more than within 30 days for critical security patches;
- change management procedures; and
- incident detection and management.

Webtrends shall maintain Client Data within the Solutions production environment on fully redundant or replicated storage systems, utilize a multi-tiered backup approach, and place backup media in locked containers stored in secured offsite location.

Webtrends shall maintain audit information and logs for all systems, applications and network accesses, monitor these logs for abnormal pattern and unauthorized access attempts, and maintain defined processes for security alerting, escalation and remediation. Logs shall be centralized in a limited-access system that prevents deletion and changes.

Webtrends shall deploy anti-malware software with automatic scanning and update on all workstations; install anti-malware software on all Windows external-facing web servers with weekly scans; and scan all deployed code for malware.

Internal audits of the environment shall be performed at least quarterly and include, at a minimum, intrusion detection and firewall configuration, access rights, and audit log.

9. Communications Security

Webtrends follows guidance from the ISO/IEC 27002:2013 standard. Additionally, Webtrends employs industry standard practices and relies on its 15 years of experience in operating highly secure Solutions for security controls such as firewalls, intrusion detection, change management and security policies. Webtrends shall employ network security control measures over all systems used to create, transmit, or process Client Data, including but not limited to the following controls:

- Technology controls shall include, at a minimum, firewalls, security monitoring and alerting systems, intrusion detection systems (IDS); and
- The environment shall be monitored and managed 24x7 and supported by operations procedures.

All transfers of Client Data over public transport (network, physical media, etc.) shall be encrypted using industry standard encryption, and connections between trusted and untrusted networks shall be restricted by strict firewall rules. For the initial data collection, Webtrends JavaScript code automatically detects the protocol used for the source page and uses the same (i.e., it defaults to HTTPS for secure pages and HTTP for non-secure pages). Client may override these defaults to force the use of HTTPS for all pages and Client is responsible for the use of the appropriate protocol.

10. System Acquisition, Development and Maintenance

The Webtrends Solutions production environment (including facilities, network and staff) shall be logically and physically separated from the Webtrends corporate and development environment. Webtrends shall follow secure development industry standard practices, including the use of OWASP Secure Coding Guidelines, and shall perform code reviews and security testing for key functionality.

11. Third Party Relationships

Webtrends shall maintain formal agreements with any third party having access to Client Data or Information Technology Resources, and such agreements shall require security controls employed by the third party to be consistent with Webtrends' security practices and include a non-disclosure clause.

12. Security Incident Management

Webtrends shall maintain a documented security incident response process for reporting, responding to, and managing any unauthorized

access to, disclosure of, misuse of, and/or loss of Client Data, and use commercially reasonable efforts to notify Client within 48 hours of any breach affecting their Client Data. Client agrees that Webtrends shall not be required to report unsuccessful security events, such as pings on Webtrends firewall, port scans, and failed log-on attempts.

13. Business Continuity and Disaster Recovery

Webtrends shall maintain and test a business continuity plan (BCP) and disaster recovery (DR) plan that prioritizes critical functions (such as data collection) supporting the delivery of its Solutions to its clients. Under such plan, a data collection center availability event should not result in a complete data loss greater than 10 minutes isolated only to the traffic being collected by the failed data collection center. Webtrends retains DR archives of Client Data for up to two years after the backup.

The Webtrends SaaS Operations team performs a comprehensive annual risk assessment.

14. Compliance

Webtrends shall engage an independent third party security firm annually to conduct a vulnerability scan of all external-facing (public) infrastructure devices and application penetration test of its Solutions.

Webtrends does not allow clients to perform their own audits, but will reasonably collaborate with Client for applicable required regulatory audits by third party regulators of Client. Any such audits shall be subject to reasonable confidentiality and security procedures and the results of such audits shall constitute Confidential Information of Webtrends. Additionally, Webtrends shall engage annually a nationally recognized accounting firm to perform a Service Organization Controls 3 (“**SOC 3**”) audit and shall make the SOC 3 report publicly available on its website.

Exhibit D

Service Level Agreement ("SLA")

This SLA sets forth the service level terms that apply to one or more of the following Solutions to be provided to Client under the Agreement during the applicable order term set forth in a Quote: Webtrends Analytics, Webtrends Segments, Webtrends Optimize, and Webtrends Streams. Except as otherwise indicated, the defined terms in this SLA shall have the same meaning as in the Agreement.

User Interface Availability

- (i) Guideline 1 Availability of the applicable Solution's user interface will average at least 99%, as measured monthly, subject to the Exclusions set forth below. Violation must be measured and verified by Webtrends' approved third party reporting agency.
- (ii) Remedy Client will be granted a Service Credit equal to the average daily collected volume for the applicable Solution during the month in which the violation occurred, to be added to Client's purchased total volume for such Solution for the then-current term only.
- (iii) Guideline 2 Any single outage event will not exceed two (2) hours in length, subject to the Exclusions set forth below.
- (iv) Remedy Client will be granted a Service Credit equal to ½ of the average daily collective volume for the applicable Solution during the month in which the violation occurred. Service Credit shall be added to Client's purchased total volume for such Solution for the then current term only. This remedy will not be issued if the remedy for Guideline 1 is issued.

Data Collection Availability

- (i) Guideline 1 The guaranteed uptime for data collection network will average at least 99.9%, as measured monthly, subject to the Exclusions set forth below. Violation must be measured or verified by Webtrends' approved third party reporting agency.
- (ii) Remedy Client will be granted a Service Credit equal to the average daily collected volume for the applicable Solution during the month in which the violation occurred. Service Credit shall be added to Client's purchased total volume for such Solution for the then-current term only.
- (iii) Guideline 2 No single data collection network outage will exceed one (1) hour, subject to the Exclusions set forth below.
- (iv) Remedy Client will be granted a Service Credit equal to the average daily collected volume for the applicable Solution during the month in which the violation occurred. Service Credit shall be added to Client's purchased total volume such Solution for the then-current term only. This remedy will not be issued if the remedy for Guideline 1 is issued.

Service Credits

Service Credits are granted only for the specific Solution that is in violation of the applicable SLA. For Webtrends Analytics, volume is measured in Server Calls and Service Credits shall mean Server Call credits. For Webtrends Segments, volume is measured in Events and Service Credits shall mean Event credits. For Webtrends Optimize, volume is measured in Optimize Events and Service Credits shall mean Optimize Event credits. For Webtrends Streams, volume is measured in Streams Events and Service Credits shall mean Streams Events credits. Any Client request for a Service Credit must be submitted within thirty (30) days after the end of the relevant month or shall be deemed to have been waived by the Client.

Exclusions

The User Interface Availability SLA and the Data Collection Availability SLA do not apply to any interruption or unavailability (i) due to scheduled maintenance notified to Client by Webtrends at least twenty four (24) hours in advance by means of an e-pop up or email; (ii) due to unscheduled maintenance notified to Client by Webtrends at least one (1) hour in advance by means of an e-pop up or email; (iii) caused by factors outside of Webtrends' reasonable control, including, without limitation, any force majeure event, Internet access or related problems beyond the demarcation point of Webtrends' servers; (iv) caused by network intrusions or denial of service attacks; (v) caused by any action or inaction of Client or any Client User; (vi) arising from Client's equipment, software, or other technology, and/or third party equipment, software and/or technology (other than third party equipment within Webtrends' reasonable control); and/or (vii) arising from Webtrends' suspension and termination of Client's right to use the Solution in accordance with this Agreement.

Sole Remedy. In the event of a violation of this SLA, Client is entitled to receive (as the sole remedy) the Service Credits set forth herein. The aggregate Service Credits for a particular month shall not exceed 100% of the volume purchased for the applicable Solution that is allocated for that month.

Exhibit E-1

Supplemental Terms

A. Webtrends Entity: For Clients located in Europe (excluding Aland Islands, Faroe Islands, Greenland, Denmark, Finland, Iceland, Norway, and Sweden), the Middle East, or Africa, the Webtrends entity entering into this Agreement is WT EMEA Acquisition Limited with registered offices at Mallard Court, Market Square, Staines, Middlesex TW 18 4RH United Kingdom, Registration No. 05389904.

B. Local Language Requirement: If the laws of the country in which Client is located require that contracts be in the local language in order to be enforceable, the version of this Agreement that shall govern is the translated version of this Agreement in the local language that is produced by Webtrends within a reasonable time following Client's written request to Webtrends.

C. Fees and Payment: Section 7.2 (Fees and Payment) of the Agreement is replaced in its entirety with the following:

Fees and Payment - All fees are as set forth in the applicable Quote and shall be paid by Client in accordance with the invoice schedule and in the currency set forth in the applicable Quote (and if none, within thirty (30) days of the date of applicable invoice and in pounds sterling). Except as expressly set forth in Section 8.2 (Termination for Cause), Section 9.1 (Limited Warranty), Section 11.4 (Limited Professional Services Warranty), and Section 13.1 (Indemnification by Webtrends), all fees are non-refundable. The rates in the Quote are valid for the initial twelve (12) month period of each Order Term. Client is required to pay any sales, use, value-added, withholding, or similar taxes or levies, whether domestic or foreign (other than taxes based on the income of Webtrends), and all such taxes and levies are excluded from any rates or prices provided by Webtrends. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by Law, whichever is less.

D. Warranty Disclaimer: Section 9.2 (Warranty Disclaimer) of the Agreement is replaced in its entirety with the following:

Warranty Disclaimer - EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ALL WARRANTIES, TERMS, CONDITIONS AND UNDERTAKINGS, EXPRESS OR IMPLIED (INCLUDING BY STATUTE, CUSTOM OR USAGE, A COURSE OF DEALING, OR COMMON LAW) ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT (BUT FOR CLARITY THIS DISCLAIMER OF WARRANTIES OF NONINFRINGEMENT DOES NOT LIMIT WEBTRENDS' INDEMNIFICATION OBLIGATIONS IN SECTION 13). WITHOUT LIMITING WEBTRENDS' EXPRESS OBLIGATIONS IN SECTION 5 (SOLUTIONS SECURITY & PRIVACY), 9.1 (LIMITED WARRANTY) OR 10 (SUPPORT SERVICES; SLA), WEBTRENDS DOES NOT WARRANT THAT CLIENT'S USE OF THE SOLUTIONS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT IT WILL REVIEW THE SOLUTIONS DATA FOR ACCURACY, THAT IT WILL PRESERVE OR MAINTAIN THE SOLUTIONS DATA WITHOUT LOSS, OR THAT THE SOLUTIONS WILL MEET CLIENT'S BUSINESS GOALS OR OTHER REQUIREMENTS OR EXPECTATIONS (OR, IF ACHIEVED, THAT SUCH RESULTS WILL BE SUSTAINABLE). WEBTRENDS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF WEBTRENDS (INCLUDING BUT NOT LIMITED TO ANY THIRD PARTY PLATFORM). CLIENT MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF SUCH STATUTORY RIGHTS, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

E. Limitation of Remedies and Damages: Section 12 (Limitation of Remedies and Damages) of the Agreement is replaced in its entirety with the following:

12.1 Consequential Damages Waiver - SUBJECT TO SECTION 12.5, NEITHER PARTY (NOR ITS LICENSORS) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL, REPUTATION OR OPPORTUNITY, LOST PROFITS OR REVENUE, ANY LOSS OF USE, LOSS OF DATA, LOSS OF ANTICIPATED SAVINGS, ANY ACCOUNT OF PROFITS, OR INTERRUPTION OF BUSINESS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH OR NON-PERFORMANCE OF IT, NO MATTER HOW FUNDAMENTAL, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

12.2 Liability Cap - SUBJECT TO SECTION 12.5 AND EXCEPT FOR EXCLUDED CLAIMS, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY'S AND ITS LICENSORS' ENTIRE LIABILITY TO THE OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CLIENT TO WEBTRENDS DURING THE PRIOR TWELVE MONTHS UNDER THIS AGREEMENT.

12.3 Excluded Claims - "Excluded Claims" means (a) amounts payable to third parties by an indemnifying party pursuant to Section 13 (Indemnification) or (b) any claim arising from Client's breach of Section 2.5 (General Restrictions) or Section 3 (Solutions Data).

12.4 Failure of Essential Purpose - The parties agree that the limitations specified in this Section 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

12.5 Exclusions - Notwithstanding any contrary provision in this Agreement, neither party limits or excludes its liability in respect of:

- (a) any death or personal injury caused by its gross negligence;
- (b) fraudulent misrepresentation; or
- (c) any other statutory or other liability that cannot be excluded or limited under Laws.

F. Governing Law; Jurisdiction and Venue: Section 16.3 (Governing Law; Jurisdiction and Venue) of the Agreement is replaced in its entirety with the following:

Governing Law; Jurisdiction and Venue - This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English law. The parties submit to the exclusive jurisdiction of the English courts for all purposes relating to this Agreement and any such dispute or claim. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement prevents either party from seeking injunctive relief in the appropriate or applicable forum.

G. Attorneys' Fees and Costs: Section 16.4 (Attorneys' Fees and Costs) is replaced in its entirety with the following: "INTENTIONALLY OMITTED".

H. Entire Agreement: Section 16.6 (Entire Agreement) is replaced in its entirety with the following:

Entire Agreement - This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, undertaking, representation or statement made (whether innocently or negligently) by any other party or any other person except as expressly set out in this Agreement, in respect of which its sole remedy shall be for breach of contract. Nothing in this Section 16.6 shall operate or be construed to exclude or limit any liability of any person for fraud, including fraudulent misrepresentation.

I. Third Party Rights: A new Section 16.16 (Third Party Rights) is hereby added to the Agreement:

Third Party Rights – Nothing in this Agreement is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce a term contained in this Agreement under the Contracts (Rights of Third Parties) Act 1999, except that Webtrends Inc. shall have the benefit of and the right to enforce all provisions of this Agreement which benefit and are enforceable by WT EMEA Acquisitions Limited. Notwithstanding the foregoing, the Agreement may be varied in accordance with its terms by WT EMEA Acquisitions Limited without the consent of, and without reference to, Webtrends Inc.

Exhibit E-2

Supplemental Terms

A. Webtrends Entity: For Clients located in Aland Islands, Faroe Islands, Greenland, Denmark, Finland, Iceland, Norway, or Sweden, the Webtrends entity entering into this Agreement is Webtrends Nordic AB, with offices at Axel Johanssons, Gata 4-6, 754 Uppsala, Sweden.

B. Local Language Requirement: If the laws of the country in which Client is located require that contracts be in the local language in order to be enforceable, the version of this Agreement that shall govern is the translated version of this Agreement in the local language that is produced by Webtrends within a reasonable time following Client's written request to Webtrends.

C. Fees and Payment: Section 7.2 (Fees and Payment) of the Agreement is replaced in its entirety with the following:

Fees and Payment - All fees are as set forth in the applicable Quote and shall be paid by Client in accordance with the invoice schedule and in the currency set forth in the applicable Quote (and if none, within thirty (30) days of the date of applicable invoice and in EUR). Except as expressly set forth in Section 8.2 (Termination for Cause), Section 9.1 (Limited Warranty), Section 11.4 (Limited Professional Services Warranty), and Section 13.1 (Indemnification by Webtrends), all fees are non-refundable. The rates in the Quote are valid for the initial twelve (12) month period of each Order Term. Client is required to pay any sales, use, value-added, withholding, or similar taxes or levies, whether domestic or foreign (other than taxes based on the income of Webtrends), and all such taxes and levies are excluded from any rates or prices provided by Webtrends. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by Law, whichever is less.

D. Governing Law; Jurisdiction and Venue: Section 16.3 (Governing Law; Jurisdiction and Venue) of the Agreement is replaced in its entirety with the following:

Governing Law; Jurisdiction and Venue - This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English law. The parties submit to the exclusive jurisdiction of the Swedish courts for all purposes relating to this Agreement and any such dispute or claim. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement prevents either party from seeking injunctive relief in the appropriate or applicable forum.

E. Third Party Rights: A new Section 16.16 (Third Party Rights) is hereby added to the Agreement:

Third Party Rights – Nothing in this Agreement is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise), except that Webtrends Inc. shall have the benefit of and the right to enforce all provisions of this Agreement which benefit and are enforceable by Webtrends Nordic AB. Notwithstanding the foregoing, the Agreement may be varied in accordance with its terms by Webtrends Nordic AB without the consent of, and without reference to, Webtrends Inc.

Exhibit E-3

Supplemental Terms

A. Webtrends Entity: For Clients located in Australia or New Zealand, the Webtrends entity entering into this Agreement is WT EMEA Acquisition Limited, Australasia Branch with offices at Level 27, Rialto South Tower, 525 Collins Street, Melbourne VIC, 3000 Australia.

B. Local Language Requirement: If the laws of the country in which Client is located require that contracts be in the local language in order to be enforceable, the version of this Agreement that shall govern is the translated version of this Agreement in the local language that is produced by Webtrends within a reasonable time following Client's written request to Webtrends.

C. Fees and Payment: Section 7.2 (Fees and Payment) of the Agreement is replaced in its entirety with the following:

Fees and Payment - All fees are as set forth in the applicable Quote and shall be paid by Client in accordance with the invoice schedule and in the currency set forth in the applicable Quote (and if none, within thirty (30) days of the date of applicable invoice and in AUD). Except as expressly set forth in Section 8.2 (Termination for Cause), Section 9.1 (Limited Warranty), Section 11.4 (Limited Professional Services Warranty), and Section 13.1 (Indemnification by Webtrends), all fees are non-refundable. The rates in the Quote are valid for the initial twelve (12) month period of each Order Term. Client is required to pay any sales, use, value-added, withholding, or similar taxes or levies, whether domestic or foreign (other than taxes based on the income of Webtrends), and all such taxes and levies are excluded from any rates or prices provided by Webtrends. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by Law, whichever is less.

D. Third Party Rights: A new Section 16.16 (Third Party Rights) is hereby added to the Agreement:

Third Party Rights – Nothing in this Agreement is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise), except that Webtrends Inc. shall have the benefit of and the right to enforce all provisions of this Agreement which benefit and are enforceable by WT EMEA Acquisitions Limited. Notwithstanding the foregoing, the Agreement may be varied in accordance with its terms by WT EMEA Acquisitions Limited, Australasia Branch, without the consent of, and without reference to, Webtrends Inc.